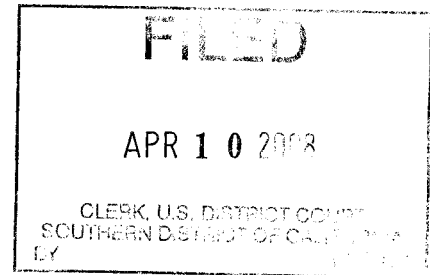


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6 Attorneys for Plaintiff
 7 UNITED STATES OF AMERICA

8 UNITED STATES DISTRICT COURT
 9 SOUTHERN DISTRICT OF CALIFORNIA 08cr1117-BTM

10 UNITED STATES OF AMERICA,)

Magistrate Case No. 08MJ0950

11 Plaintiff,)

12 v.)

**STIPULATION OF FACT AND JOINT
 MOTION FOR RELEASE OF
 MATERIAL WITNESS(ES) AND
 ORDER THEREON**

13 JUAN RODRIGUEZ-RODRIGUEZ,)

14 Defendant.)

(Pre-Indictment Fast-Track Program)

15
 16 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
 17 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Caroline
 18 P. Han, Assistant United States Attorney, and defendant JUAN RODRIGUEZ-RODRIGUEZ, by
 19 and through and with the advice and consent of defense counsel, Gregory T. Murphy, that:

20 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
 21 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
 22 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
 23 guilty to the pre-indictment information charging defendant with two counts of violating
 24 Title 8, United States Code, Section 1325.

25 //

26 //

27 //

28 CPH:lg:4/1/08

2. Defendant acknowledges receipt of a plea agreement in this case and agrees to provide the signed, original plea agreement to the Government not later than five business days before the disposition date set by the Court.

3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or before **May 27, 2008**

4. The material witnesses, Gloria Vazquez-Duran, Naraly Solis-Candelaria and Octavio Lugo-Garcia, in this case:

- a. Are aliens with no lawful right to enter or remain in the United States;
- b. Entered or attempted to enter the United States illegally on or about March 26, 2008;
- c. Were found in the trunk of a vehicle driven by defendant at the San Ysidro, California, Port of Entry (POE), and that defendant knew or acted in reckless disregard of the fact that they were aliens with no lawful right to enter or remain in the United States;
- d. Were paying or having others pay on their behalf \$2,000-\$3,000 to defendant and to others to be brought into the United States illegally and/or transported illegally to their destination therein; and,
- e. May be released and remanded immediately to the Department of Homeland Security for return to their country of origin.

5. After the material witnesses are ordered released by the Court pursuant to this stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

- a. The stipulated facts set forth in paragraph 4 above shall be admitted as substantive evidence;
- b. The United States may elicit hearsay testimony from arresting agents regarding any statements made by the material witness(es) provided in discovery, and such

1 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements
2 against interest of (an) unavailable witness(es); and,

3 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
4 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
5 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
6 waives the right to confront and cross-examine the material witness(es) in this case.

7 6. By signing this stipulation and joint motion, defendant certifies that defendant has
8 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
9 further that defendant has discussed the terms of this stipulation and joint motion with defense
10 counsel and fully understands its meaning and effect.

11 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
12 immediate release and remand of the above-named material witness(es) to the Department of
13 Homeland Security for return to their country of origin.

14 It is STIPULATED AND AGREED this date.

15 Respectfully submitted,

16 KAREN P. HEWITT
17 United States Attorney

18 Dated: 4/10/08.

19 CAROLINE P. HAN
20 Assistant United States Attorney

21 Dated: 4/9/08.

22 GREGORY T. MURPHY
23 Defense Counsel for
24 JUAN RODRIGUEZ-RODRIGUEZ

25 Dated: 4/9/08.

26 JUAN RODRIGUEZ-RODRIGUEZ
27 JUAN RODRIGUEZ-RODRIGUEZ
28 Defendant

ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 4/10/08


United States Magistrate Judge